CIRCULAR.

Washington, May 20, 1824.

FELLOW-CITIZENS:

There are three primary elements, or if you please, *primary powers*, in the representative form of government: the Power of the Sword, the Power of the Purse, and the Power of Public Opinion. Some suppose that this last power is a *new one*, created by the American revolution, and implanted for the first time in our political system, while others imagine that it exists in all forms of Government, active or passive, dormant or dominant. How this may be in the systems adopted by other nations is of little consequence to us, but in our political system we should never forget, that *public opinion* is the primary element of constitutional liberty—the great conservative principle of self-government. This opinion, however, "to be rightful," should be well informed; and hence a free people, if they intend to remain so, should take knowledge, from time to time, of their political affairs, and look into the conduct and course of policy pursued by the public agents and functionaries. In this way the re-action of public opinion upon men and measures will be always salutary, and never injurious.

Feeling satisfied that you concur with me in these general ideas, I shall proceed in accordance with them, to give you a concise view of the most important subjects that were brought before Congress during the present session; and in doing this, it may be well to mention that several measures, which had been discussed in former Congresses, were again revived during the last winter; and as some of these were intended to promote the same general interests, and sustain the same system of national policy, I will name them together for the sake of brevity, hoping that what I shall say in reference to each, may help you to understand the policy and tendency of all of them: They were brought forward under the following titles, viz:

"A bill to amend the several acts imposing duties on imports," or, in other words—*The new Tariff*. This bill has passed.

"A bill to procure the necessary surveys, plans and estimates upon the subject of roads and canals."—(*i. e.*) The Internal Improvement Bill."

"A bill to improve the navigation of the rivers Ohio and Mississippi."

"A bill appropriating money to assist the States of Kentucky and Ohio to open a Canal around the Falls of Ohio, at Louisville, Kentucky."

"A bill to extend the Cumberland Road from Wheeling, Virginia, westward, to the Mississippi."

"A bill imposing duties on sales at auction."

The four last bills were intended as auxiliaries of the former, and as such require no further explanation.

I begin with the Tariff. It is said that the people of the United States contribute equally in support of Government, and it would seem to follow that the Government ought to redisburse the public monies in the same proportion, or as nearly so, as possible. This is what Mr. Jefferson intimated in his message to Congress, when he recommended a "just repartition of the public revenue among the States," by applying it, "in times of peace, to Rivers, Canals, Roads, Arts, Manufactures, Education, and other great objects within each State." But there are only two modes by which this can be effectually and usefully accomplished: First—By regulating the Tariff of duties from time to time, so as to give equal patronage to all our great national interests; and, second—By proper disbursements upon the objects mentioned by Mr. Jefferson, in such proportions as will produce an equation of benefits and burdens.

It is agreed on all sides, that the interests of agriculture, manufactures, commerce and navigation, may be materially affected by legislation:—That they may be affected *directly* by the legislative policy of our own country, or *indirectly*, by that of foreign countries, where we have trade and intercourse.—This effect may be favourable or injurious to those interests: some may be favoured more than others, and some depressed more than others: some may be hastened, and others retarded, in their natural growth and extension. One may be overdone by forcing too much capital into its employment; another checked by fixing unequal burdens upon it: In short, those interests may be encouraged *equally* or *unequally*, by our own system of legislative policy, or discouraged equally or unequally by the reaction of foreign systems of policy upon our commerce with foreign nations. I admit that the natural growth of these interests is the best, and most durable; because every thing that is forced is temporary and unprofitable; but I have said elsewhere, and I repeat it here, that the *natural growth of manufactures* in this *country*, has been *checked and retarded* by the British system of drawback, bounties, premiums and prohibitions; and if so, it would seem to follow of course, that the Government ought in justice, to protect them up to the point of fair and equal competition. This was in part the object of the *New Tariff*. But it had other objects to accomplish. The friends of the measure were of opinion

that, in the formation of an American system of policy, the interests of agriculture should stand first in favour, and manufactures next, and then commerce and navigation. They were ranked in that order in the bill, and surely it is the natural order of things in the scale of national utility. But it so happens that, heretofore the policy of Government has been more favourable to commerce and navigation, than it has to agriculture and manufactures. Those who examine the subject will concede in candour, that foreign commerce and the coasting trade have been fostered and protected, even up to the point of actual prohibition, while but little, or rather nothing, has been done for agriculture, manufactures, or interior trade among the States. Tide water capital, tide water labour, and all the tide water interests, have been amply protected and encouraged. *We have an effective system of tide water prohibition and protection*—but it is limited to tide water interests, while all other interests have been left to struggle unprotected against the ruinous effects of foreign competition. It is known that commerce among the states, particularly among the inland States, cannot prosper, or promote the prosperity of agriculture or manufactures, unless roads, canals, and bridges are made to aid its operations, and reduce the heavy burdens of inland transportation; and yet Congress has refused to make them. The sugar and cotton interests, and the friends of foreign commerce, affect to consider it a sacrifice on their part to allow roads and canals to be made by appropriations from the national treasury, as if no sacrifice had been made in their behalf; or, as if it was not the duty of individuals to make *equal* and *mutual* sacrifices for the general good, so as to put all upon an equal footing of equality. Experience has always and every where proven, that the home trade is the most advantageous to the great mass of the people, and hence all nations have thought it their duty to foster and protect home industry and domestic commerce. This is wise and proper in all governments, and is absolutely necessary in a federation like ours, composed of free and sovereign States. It would be easy to prove that the rates of duties, imposed by the existing Tariff upon importations, are so regulated as to press unequally upon the great interests before named; and moreover, that the pressure is unequal in reference to certain portions of the union, compared with other portions. If this be the fact, and I have no doubt of it, the injured States and neglected interests ought to insist that Congress shall hasten to place them on an equal footing with the most favoured States and interests: And may they not rightfully demand that Congress shall use the powers delegated to it, so as to bestow protection upon

all, as each would have done if it had reserved the necessary means. The subject is of great importance to the nation, and some light may be thrown upon it, by referring back to the *rights* and *powers* of the States before the federation.

What were those rights and powers?

Before the formation of the General Government, the States were foreign to each other, and all of them had the exclusive power of legislation over their foreign affairs, as well as their domestic interests—over their exterior commerce, as well as their interior trade. We know that each state had its particular system of taxes, duties and imposts; each its own system of commercial regulations, and the interests of agriculture, manufactures and commerce, were protected and encouraged, equally or unequally, as they happened to find favour in the sight of the different legislative bodies. The action and reaction of these conflicting regulations upon each other, were so unequal and vexatious, so partial and onerous to all, and often so ruinous, that the people were no longer able to endure them; and by referring to the history of those times, you will find, that these vexations were among the causes which induced the States to call the convention of 1789, by which our present happy Constitution was formed, and recommended for adoption. To prove this, I need only refer to the Constitution itself, and to the letter of General Washington, written in the Convention, while he was President of that body, (and sent with the Constitution to the President of Congress,) in which he says:—"The friends of our country have long seen and "desired, that the power of making war, peace, and treaties, "that of levying money and regulating commerce, and the cor- "respondent Executive and Judicial authorities, should be "*fully* and *effectually* vested in the general government of the "Union:" And that the States did surrender their power entirely, or in part, to Congress, over these as well as some other subjects, may be shown by quoting a few clauses of the Constitution. In the 8th section of the 1st article, you will find the following grants of power, viz:

Congress shall have power—

"To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:"

'To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes:"

"To establish Post Offices and Post Roads:"

"To make all Laws which shall be necessary and proper for carrying into execution the foregoing powers, and all the

powers vested by this Constitution in the government of the United States, or in any department or officer thereof:"

And in the 9th and 10th sections of the same article, you will find that the States agree to prohibit themselves from using *certain powers*, and the following among others, viz:

"No tax or duty shall be laid on articles exported from any State."

"No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

"No State shall, without the consent of Congress, *lay any imposts, or duties on imports or exports*, except what may be absolutely necessary for executing inspection laws; and the nett produce of all duties and imposts, laid by any State on imports and exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will admit of no delay.

And in the sixth article, we read the following clause:—

"This Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

We find in these quotations that the people have granted to Congress the power of "regulating commerce among the several States," and have surrendered to it, the power "to lay and collect duties on imported goods; and have expressly prohibited themselves from laying any such duties, and of course, each State is prohibited from protecting its domestic industry by laying duties on foreign importations, or of promoting the interest of agriculture and manufactures by making roads, canals, and bridges, to facilitate the operations of inland trade among the States. It is true that the States have retained the power of making roads and canals, within their respective limits, for State purposes; but they have surrendered to Congress the most useful and necessary power to attain those ends; I mean, the power of raising revenue by laying duties on importations,

to be expended in the construction of canals and roads. The money power is the only efficient one, and without it the other is a dead letter: I say, a dead letter, because, although the States may raise money and expend it on those objects, yet experience proves that their limited means of revenue are barely sufficient for the current service of state government. Few of them are able to do more than make such roads and canals as are necessary for local intercourse and state trade; and none of them are able to execute any great national scheme of internal improvement.

I have shown you that before the federation, each State had the power of laying and collecting duties upon foreign merchandize, either for the *single purpose* of revenue, or for that, and the *several purposes* of protecting and encouraging agriculture, manufactures, and domestic commerce; and it appears, by quotations from the constitution itself, that the power of doing these thing is vested in Congress; and now the enquiry comes forward,—what are the duties of the general government in these matters? Is it not the duty of Congress to foster and protect the domestic labour of the country in the same manner, and to the same extent that the States could have done, and would have done, if they had reserved the power of doing it? Our federation is a household on a large scale, and that which was written of men is also true of nations; "they who provide not for their own household by the protection of domestic industry, are worse than infidels." Should I be asked, how, or in what way, can Congress encourage the great national interests of which I am speaking? I answer as before—

First, by doing what the states could have done, and would have done, if they had reserved the power; that is, by such increase of duties on imports as will protect agriculture and manufactures against the ruinous effects of foreign competition.

Second, by expending a portion of the duties raised upon foreign trade, in the construction of roads, canals, and bridges, to facilitate the operations of trade and intercourse among the States.

This is exactly what foreign nations do in reference to our commerce with them. It is what the States had the power of doing in reference to foreign trade before the federation: and this is what Congress ought now to do; the power of doing it being vested on that body. These were, in fact, the general objects of the two bills already named, and this brings me to say, that I thought it my duty, as your representative, to support those bills, and all other measures calculated to support the same national interests.

An opinion previals among the opposers of the tariff, that it is best, in all instances, to let manufactures grow up of themselves

spontaneously, without the aid of government;—But to this I reply in the language of *Washington*, "the safety and interest of a free people require that they should promote such manufactures as tend to render them independent on others for essential, particularly for military purposes." See his message to Congress, Jan. 8th, 1790, State Paper 1, vol. 14. And speaking for myself as an American, I am prepared to say, that some articles of manufacture ought to be protected by the government, and patronized by every friend to the republic, without regard to his private interests or opinions. Among these I would class, first, all articles necessary for national defence; second, all articles the indispensable use of which, makes it imprudent to trust the contingencies of foreign trade for regular supplies; and third, all such articles generally as there is reason to believe could sustain themselves after being established by moderate protection. It is contended also, that foreign commerce is most advantageous to our country, when left entirely unrestricted, no matter how far foreign nations may shackle or restrict our own: but in reply to this I quote Mr. Jefferson, who advised Congress to "meet inequalities abroad with countervailing inequalities at home." See his message to Congress, Dec. 6, 1802, State Papers, 4th vol. 449. I am willing to exchange free trade *for* free trade; but shall always hasten to restore equality of competition, by opposing duty to duty, surcharge against surcharge, restriction against restriction, and prohibition against prohibition. If one nation restricts and shackles commerce by artificial means, all other nations must suffer, or take the same means to restore the equilibrium, and re-establish the equations of trade and intercourse. And I cannot consent to settle the account of profit and loss at the peace prices, because all must know that the true price which is paid by nations for their imports is the *average* of *peace and war* prices taken together; and not the average of either separately considered. In saying this, I only repeat an idea which was thought of sufficient importance by Mr. Madison to be urged in one of his messages to Congress, as an argument in favour of domestic manufactures. And here I must leave the subject, with a hope, however, that I shall find other occasions of going more at large into its merits.

Roads and Canals.

The bill to procure surveys, plans, and estimates, for roads and canals is intended to begin a system of internal improvements upon a scale commensurate with the wants and interests of agriculture, manufactures, and interior trade. It has been signed by the President, after passing both Houses of Congress, and is now a law of the United States, to be executed under his directions.

Every plan for the improvement of the interior of our country must include in it a line of canals from the Chesapeake Bay, to steam boat navigation on the Ohio; and as a scheme to unite those waters by canals has been presented to the public, I will endeavour, with your leave, to lay before you the views I take of that particular subject. You will see at a glance that it opens a wide field of enquiry, and I must from necessity limit myself to a few considerations only, without even alluding to others equally deserving of attention.

I shall begin by making two observations, or rather, I shall hazard two opinions in reference to our western trade; one of which is this: that mainly, and in the course of time, the staples of the three western state, Ohio, Indiana, and Kentucky, will cross the Alleghany mountain, or pass around it northward in search of a seaport, from whence they can be exported or shipped coastwise for consumption; and the same may be said of the State of Illinois, or a part of it, and so much of Virginia and Pennsylvania as lies on the western waters.

The proof is, that without the canals, a portion of our most bulky articles, say tobacco, hemp, spun yarns, &c. have been sent up the river Ohio in keel and steam boats, and transported in wagons to Baltimore and Philadelphia; and it is said that bales of cotton have been forwarded from Natches to those places in the same way. But the operation requires a steady market; for, if the prices fall suddenly or fluctuate rapidly, the calculation fails, and the trader usually fails also. It now costs an average of about two and a half cents per pound to transport hemp from the interior of Kentucky to either of those seaports, two-thirds of which would be saved by canal navigation; and being saved, that staple could then enter into competition with the Russia hemp on our seaboard, without any increase of duty on the foreign article. In driving our hogs, it costs us, on an average, two dollars per hundred nett; one half of which, or less, would transport them to market on canals, in the shape of pickled pork and bacon. The same may be said of other articles; and it follows of course, that if a canal was now ready for us, we should use it to transport a portion of our staples across the Alleghany mountain to a good market, rather than descend the river to a bad one. But this is not all.—Let me invite your attention to the following facts: that the navigation of the Ohio is interrupted annually by low water, say seven months in twelve; that the Mississippi is navigable for steam boats all the year, (or nearly so,) from St. Louis to New-Orleans; that the upper Mississippi and Missouri are navigable much earlier in the fall and later in the spring than the Ohio; that the lands on the rivers Ohio, Mississippi, and Mis-

souri, and their tributary waters, produce the same staples in common, and are equally fine for live stock of every kind :—In a word, that all the great staples of the three states, Ohio, Indiana, and Kentucky, are the staples of the vast regions of country lying west of them. Now, in a few years, the inhabitants of those regions, (say States and Territories,) will supply New-Orleans and the lower Mississippi with whatever is wanted for consumption ; and having the earliest fall navigation, will get to market first, and thereby secure the best and highest prices. On the contrary, the people of the three States just named, must send their exports to a dead market, or at best a dull one, and sell at a loss, or store up and run the risk of climate, water, fire, and fraud :—I mean the frauds and failures of agents and commission houses. After these things are duly considered, if we reflect a little upon the rapid increase of population in the west, and remember that at this time one-fourth of the entire population of the United States is located on the western waters ; and if, moreover, we look at the census and tables of western exports for the year 1810, and prior periods, and compare them with the census and corresponding tables of the present time, as a basis for future estimates, we shall convince ourselves that it is the interest of the people whose trade floats on the Ohio river, to look *eastward for a permanent market, and make some of the Atlantic seaports a place of depot, from whence their products may be exported, or trans-shipped coastwise for consumption.*

It is perfectly clear that Richmond, (say Norfolk,) Washington, (say Alexandria,) Baltimore, Philadelphia, and New-York, are the points of Depot, and one of those cities may, and I believe will, at some future period, be the *principal emporium* of the commerce of the Ohio river.

Richmond may become that emporium by means of a canal from the Ohio, up the Kenhawa to its falls, and from thence by a land route to James river at the mouth of Dunlap's creek, (a portage of 90 miles) and then down James river on its propos ed canal.

Washington, say the District of Columbia, by means of a ca nal from the Ohio up the Mononghahela, and some one of its streams, to the waters of the Potomac, and down that river to the District. The States of Maryland and Virginia have had this line under consideration for some time ; and a scheme has been projected to begin the work, as before noticed, but nothing has as yet been done.

Baltimore, by an extension of the Potomac canal from Georgetown to that city, or by a lateral cut from a point below Harper's ferry, or by a canal down the Susquehannah to its mouth, and from thence to Baltimore, or by all of these routes.

Philadelphia, by a canal from some point on the Alleghany river to the Susquehannah, and down that river to the head of the Union canal at the mouth of the Swatawra, (Middletown,) and thence by that route to the city, say one hundred and thirty miles, or by passing down to the Chesapeake and Delaware canal and through it, and up the Delaware river to the city.

New-York, by a canal across the State of Ohio to Lake Erie, and down that Lake to the head of the great canal which the State of New-York is now completing.

These are supposed to be the only practicable routes for canals, from steam-boat navigation on the Ohio to tide water on the Atlantic, and I am prepared to say, that the line to Baltimore, if made as safe and easy as the others, would be preferred to either of them; with the exception, however, that the western trade, after ascending the Alleghany river, and passing over the mountains and down the Susquehannah, would probably go to Philadelphia for a market, rather than fall back upon Baltimore, because it is of little consequence to us which line is taken as an eastern outlet for our commerce to sea.

I said that I would hazard two opinions, one of which has been stated, and the other is this : that the time is coming, and not far distant, when the people of the United States will manufacture for themselves, principally, if not entirely. When that period arrives it will be found that each State will not be prepared to make its own fabrics, but that some will have to supply others, and make exchanges for mutual profit or convenience. One will furnish food, another raiment, and so on ; and this is exactly as it should, because it will make us mutually dependant on each other. The western States for instance, if they can have good roads and canals to market, will continue agricultural for a century to come, and rely mainly upon the eastern States to furnish them with manufactures for consumption, especially those fabrics of which cotton or wool is the staple of chief value. This, to me, is very clear, and I might attempt to prove it, but shall content myself with saying, that nothing can prevent it but the want of roads, canals and bridges.

Let that be admitted to save argument, and then several questions will arise, in which the city of Baltimore has a deeper interest than any sea-port in the Union. Which of the cities on the Atlantic shall be our Depot, and which shall furnish us with manufactures? Shall we draw upon one, or several of them? Are the natural advantages among them equal; and if so, which of them will gain the "vantage ground" by artificial means? New-York for instance, by means of her canal, and its facilities. Are not some of them possessed of local advantages over others, which may be lost by delays, or by following

false systems of policy as to internal improvements? Will the profit and loss of trade, induce us to prefer any of them to the others? To these and all similar enquiries, one general answer may be made; Baltimore, if her natural advantages are *wisely improved* in proper time, by artificial means, will ultimately become the Depot of our western trade, or at least of the great mass of it. The proof of this must lie in the experiment, and I shall only offer a few hasty suggestions in support of my opinion, leaving you to give them such attention as they may seem to merit, when tested by an application to your particular, or general interest in the question.

The great manufacturing establishments in the United States will be located on and near tide water, and North of the Potomac; and a competition for the western trade will always exist among them. I am not exactly informed of all the local advantages and facilities of certain places in the United States, as manufacturing districts, nor am I a competent judge of such matters; but it appears to me that *water power* will always be preferred to that of steam, or any other substitute. Let that be granted, and then make a circle around Baltimore of *thirty miles radius*, and there is no equal space of ground in the Union that has as much natural water power, united with as many local facilities: and besides, Baltimore is in the *line* from Boston to the western States. It is also a sea port; and in that respect has some obvious advantages in reference to our western trade, which cannot be enjoyed by any sea port north or east of it. In fact, *Baltimore has, within and near it, all the elements of a great manufacturing and commercial city*, coal only excepted, and that article could be brought to it in abundance, down the proposed canals on the Susquehannah and Potomac. Why then may not Baltimore establish factories, and supply the western States with cottons and woollens? Surely it could; and I repeat, that nothing is more certain, if good canals are made from that city to the western waters, and good roads extended to the western States and through them. The same may be said of Philadelphia with some abatements; but this ought to create no rivalry between Baltimore and that city, because all experience proves that cities and nations prosper most when *stimulated* by a common spirit of generous entertrize; and least, when *instigated by envious and jealous* passions. Those cities ought to emulate New-York, rather than contend against each other. *As consumers* of imports, the western people have established their course of trade with Philadelphia, and she will retain them so long as payments are made in money or an equivalent in bills of exchange; but they will leave that city and open trade in a new market the moment one presents itself in which they can *exchange their ex-*

ports directly for their imports. I am much mistaken if New-York, by means of the great canal, will not place herself exactly in that position, and become the outlet of the west, and the mart of its exchange; and if she does, it is doubtful whether Baltimore and Philadelphia both united, and supported by their respective States, would be able to enforce a successful competition? This, however, is their business and not ours.

I know there are fears existing among us in the *west*, that in a few years the New-York canal will not float the produce of that State and the adjacent Lakes to market; in which event we shall be driven to seek some other outlet to the sea, or continue our trade down the Mississippi as heretofore, under all its disadvantages. That we can do upon compulsion, but the point in argument is this.—suppose a still water line of navigation established by canals, from the Ohio to the Chesapeake, uniting with an interior line coastwise, from New-York to Charleston, (South Carolina,) will the commerce of the Ohio river seek a market at Baltimore, or will it go north about to New-York, or continue to descend the Mississippi to New-Orleans? I answer with confidence, it will take the line to Baltimore; especially if the factories that are and may be established near that city, shall be able to supply the western demand for cottons and woollens at a fair price. It is probable that in any event, the people on Lake Erie and its waters, will find their account in trading down the line of canals to New-York, but I am speaking of the *commerce proper* of the Ohio river, such as it will be, after the proposed canals are cut, and the competition fairly settled by experience and experiment. The distance from Louisville, in Kentucky, to Baltimore, on the proposed line, may be stated at nine hundred miles, but a large portion of the trade would be far short of that distance. From Louisville to Orleans is fifteen hundred miles; but if we get our imports by way of Orleans they will be brought from Europe, or from the eastern States to that city by a sea voyage of three thousand miles, and then by an *up river* voyage of fifteen hundred miles more. No argument of distance therefore can be urged against the opinion just asserted. I have already stated the fact, than even now a part of our produce takes the line eastward, under the heavy pressure of present prices for transportation, and if we double the New-York estimates for tolls and freight on her canal, the average cost of transportation from the Ohio to Baltimore will still be cheaper than to New-Orleans; particularly if we compare as we should do, the freight and expence of *an up river cargo and down*, with an equal cargo to and from Baltimore: but let us suppose the freight and incidental expences to be equal each way, and then the line to Baltimore will be preferred for various reasons, some of which I shall suggest:

Insurance :—Still water navigation is so safe and easy, that the item of insurance would be entirely saved. This is a heavy charge upon a Mississippi voyage both down and up; and although each exporter ensures for himself, there being no office to ensure at, yet that cannot change the argument because it does not change the risk.

Damage by Climate :—Some of the most intelligent of our Orleans traders are of opinion, that the average loss each year by heat of climate, and other incidents, including losses by water, fire and fraud, may be rated at twenty per cent upon the amount of exports through that city. This is true when our exports are deposited to wait a slow market; but I shall rate the loss at ten per cent upon quick sales, and even at one half of that, it would seem to be a heavy loss, and some of these losses cannot be avoided, as there is no patent right, or known mode of counterchecking the effects of climate.

As a Seaport :—Baltimore is a better market for our staples than New-Orleans, and as good or better to procure our annual importations from. The proof is, an examination of the prices current at each place for a series of years, and for each month in the year:

And besides :—I have already shown that the people of Ohio, Indiana and Kentucky, will, in a few years more, be compelled to sell at New-Orleans in a dead market, or at least a dull one; because the people *south* and *west* of them will be able to supply the demand of the lower Mississippi, and will moreover have the *first run down*:

But above all :—*We could barter our exports at Baltimore directly for our imports by a series of exchanges*, and thus save the expence and hazard of transporting specie; and the risk of bills and losses on exchange in our present course of trade, and thereby realize all the profits and benefits of *annual and continued permutations*.

These considerations, in my opinion, would decide the preference, and Baltimore would become the principal emporium of our western commerce, and would thus secure the profits of the outward, and return trade also; and at the same time realize all the advantages of supplying us with domestic manufactures: in fact, she would be our counting-house and workshop. We must not forget, however, that the course of our western trade depends upon contingencies; and that Baltimore and Philadelphia may manage their intercourse with us so badly that the advantages of our commerce will be divided between them and the other large seaports, especially if interior navigation coastwise is established, by cutting canals from the Chesapeake bay to the Delaware river, and from that river through N. Jersey to N. York: The proof is, that western produce is now

shipped from Orleans to all the Atlantic seaports, and particularly to Baltimore, Philadelphia, N. York, and Boston; and I take it for granted, that the inducements to ship a cargo from Orleans to either of those places, will be equally as strong when the same cargo is brought across the mountains to Washington or Baltimore. The inducement may be a profit on the supplies for home consumption, or on the export and return trade, but is obviously unconnected with the route those products may take to tide water. Each of those cities will in any state of things enjoy some portions of our trade, and if either of them shall gain the ascendency, by roads, canals, and artificial means, the others should not repine or murmer at it; but rather hasten to restore the equilibrium by stirring up the spirit of enterprize among themselves. It is said, in reference to the Potomac line of canals, that Baltimore dreads the rivalry of the District of Columbia, and this local prejudice, without a single reason to support or justify it, will probably prevent that great and useful work from being undertaken. Were I to bring the local interest of those two places in contrast with each other, I would contend, that it is of no consequence to Baltimore whether the canal comes to it by a lateral arm, from a point below Harper's Ferry, or by extending the main trunk across the District to the eastern branch, and from thence to that city by such locations as will be most convenient for commercial purposes. The difference would not be much in distance, and the lockage on the last line would be less, and probably the tolls also; in which case the expense of transportation would be equalized. And if the inhabitants of the State of Maryland should think it best to have a cross-cut through the interior counties to the city, it would be sound policy in the people of Baltimore to unite with them in the enterprize; but even then they will find themselves compelled to make a canal from Washington to Baltimore, so soon as the Chesapeake and Ohio canal is opened; or, in other words, the people of Baltimore will find both routes convenient, but the last one *indispensably necessary*, unless they intend to promote the interests of Washington at their own expense, by a warfare of non-intercourse injudicious in the extreme, and injurious only to themselves.

In contrast with Philadelphia, it must be admitted that Baltimore and its vicinity, has the greatest quantity of *natural water power*, but a vast amount of artificial water power, has been, and may yet be created, near Philadelphia, on the Schuylkill; and if that city should ever overcome its present lassitude, so far as to essay its strength upon canals, Baltimore will be compelled, in self-defence, to begin similar enterprizes, with diminished means and smaller hopes of profit. Philadel-

phia has some advantages peculiar to itself, which, if properly improved, will enable it to maintain its present rank as a commercial entrepot; particularly if the great State of Pennsylvania should shake off her lethargy, and emulate the glorious undertakings of New-York, by establishing canals along the Susquehannah and its branches, to the western waters, on a scale commensurate with her means, and the expectations of her sister states. I mention these matters, for the purpose of shewing how the mistaken jealousies of our sea ports and large cities, may frustrate all our efforts to carry such measures as will lighten the pressure of those burdens, under which we suffer in the west. The views which I have heard, in reference to local interests, connected with the subject of canals and roads, have only confirmed me in an opinion formerly adopted,—that the best, if not the only way, to realize all the advantages of great national improvements is, to execute such works as will produce the greatest developement of general and local interests, at the same time, and thus bring into *stimultaneous action*, the *latent elements* of individual and national prosperity.

In this view of the subject, I consider the country as at peace; but that cannot always be our happy lot, and therefore, a few hints may be useful, upon the effect of roads and canals, in times of war. We all know that the Mississippi is our only out-let to the sea, and you have not forgotten the extreme agitation produced in the western States, by the refusal on the part of Spain, of our right of deposit at New-Orleans. Now, suppose a war, in which that place is taken by the enemy; or, what is the same thing, a war, in which the mouths of the Mississippi are blockaded by a hostile fleet, superior to our own. What would be our condition compared to that of the eastern States—allowing them to have a line of interior canals, coastwise? Blockade the Chesapeake, and the adjacent States could export their produce from Philadelphia, New-York, or ports further east, if necessary. Nearly all the Atlantic States, in the event of a blockade of their respective ports, could pass coastwise along a line of interior navigation, and ship outward, from eight or ten other ports; and thus, they would always have free egress to the sea, unless the enemy should divide his squadron into various fractions, and blockade each port; and thereby subject himself to be beaten in detail. But if New-Orleans is taken, or the Gulf blockaded at the Balize, we shall have no outlet for our western trade; and you can easily imagine what our condition would be in the west, with our only port closed against us, our taxes doubled to support the war, and our produce perishing on our hands. And here I might urge with great force, that the best defence of

New-Orleans would be, to diminish its value to an enemy, by giving the commerce of the western States, a new outlet to the ocean: and this would bring us to consider the subject in a military aspect, in which I should attempt to prove, that the national strength consists mainly in the rapid concentration of its armies, and the safe and rapid transportation of subsistence and munitions: and this, again, would compel me to notice the moral and political effects of roads and canals upon us as a people; and so on, until I should make a book instead of an address. But it is not given to man to foresee all the happy effects of internal improvements upon us as a nation. Our's is a moral federation,—a political federation—a social and commercial federation—and that statesman who would "make assurance doubly sure, and take a bond of fate," for the perpetuity of the Union, will find his best seal—his strongest cement, in cheap and easy intercourse, and active endless trade among the States.

These considerations open a wide field, and "furnish food for contemplation even to madness;" but I shall dismiss them with the hints already given, and content myself with one or two additional reflections. To me it is clear that the trade of the western waters will be to our large seaports, what the trade of China and the East Indies has been to Constantinople and the cities of the Mediterranean Sea; and the reaction upon our western interests will be equally beneficial. We know as a historical fact, that the jealousies which existed between some of those cities, particularly Venice and Genoa, checked the march of each to power and prosperity; and it is certainly true that their envious hostilities against each other, were the primary causes of their decline and ruin. If, therefore, "experience is a whip of scorpions," our large cities may learn wisdom in the scars and wounds of Venice and Genoa.—We are told that the Christians obtained permission more than once from the Turks and Saracens, to trade through their dominions to China and the East Indies—by the route along the Nile and the Red Sea—by the Euphrates and the Persian Gulf—and by the Black Sea and the Caspian. It was the wealth which the China trade brought with it, and left in the cities along these lines of commerce, that induced the Infidels to grant these privileges to Christian traders; and if the advantages and profits of that trade were such as to tame the wild prejudices of these ferocious people, living in dark and barbarous ages, and professing a blood-thirsty barbarian religion, *how permanent*—if a trade similar in its effects should be established among these States—how permanent would the social relations, and the union be, of a people like us, speaking the same language, living under the same federal system, sub-

ject to the same equal laws, professing the same religion, enjoying the lights of science and blessings of civilization, and unaffected by the ferocious passions and active jealousies which from time immemorial have disturbed the peace and harmony of oriental nations.

The Ohio and Mississippi Bill.

The bill to improve the navigation of the Ohio and Mississippi Rivers, passed the House of Representatives by a large majority, with an appropriation of $75,000. It directs the President to cause the *planters*, *snags*, and *sawyers*, to be cut away and removed out of those rivers, and requires him to make two experiments upon two of the sand bars designated in the bill, and if successful, then he is to proceed to improve the navigation over the other bars. As this bill will doubtless pass the Senate, and become a law, I will avail myself of this occasion to state a few facts, which will assist you in forming a just opinion of the propriety and policy of the measure: And in the first place, your attention ought to be called to the ORDINANCE FOR THE GOVERNMENT of the Territory N. West of the Ohio, passed 13th of July, 1789. It contains *six articles of compact* between the original States, and the people and States of the Territory, all of which are *unalterable*, except by common consent—U. S. Laws 1, vol. 478, and the last clause of the 4th article of Compact reads thus: "The navigable waters leading into the Mississippi and St. "Lawrence, and the carrying places between the same, shall "be *common highways, and forever free*, as well to the inhabi- "tants of the said Territory, as to the citizens of the United "States, and those of any other States that may be admitted in- "to the confederacy, without any *tax, duty, or impost therefor.*"

The State of Louisiana was admitted into the Union by the act of April 8th, 1812, upon the following unalterable condition, (among others.) "That the river Mississippi, and the "navigable rivers and waters leading into the same; and into the "Gulf of Mexico, shall be common highways, and forever free, "as well to the inhabitants of the said State, as to the inhabi- "tants of the other States, and the Territories of the U. States, "without any *tax, duty, impost*, or *toll therefor*, imposed by the "State"—See U. S. Laws, 3 vol.—and the States of Mississippi, Indiana, Illinois and Missouri, were all admitted into the Union upon the same unalterable stipulations.—See U. S. Laws, 6 vol. page 175, 7, 293, 68. These quotations are made to show you that trade and intercourse upon these rivers and their waters, or passing along the *portages*, or carrying-places between them, is as free from taxes, duties, imposts and tolls, as the trade and intercourse along the sea-board: That commerce *water-borne* upon the current of those streams,

is on the footing of *tide-borne* commerce along our coast, or in our bays and harbours. And here a question opens upon us, in which the western States are deeply interested. Suppose those States, or either of them, should create stock, or raise revenue, and expend the same in improving the navigation of the beds of those rivers; say the Ohio for instance; could they lay and collect *tolls* upon commerce there, to pay the interest, and reimburse the principal thus expended? Could they impose taxes or tolls upon western commerce to improve its *water paths*, and make them safe and easy? If not, then those States must leave their waters unimproved, or tax agriculture and manufactures for the benefit of commerce, and lay out the money for the common advantage of the nation, without any prospect of having it returned: and this too, while they see large sums annually drawn from the national treasury, to improve the navigation of tide water. I say nothing about tolls exacted upon such canals as may be made on the margin of our rivers, but confine the question entirely to the beds of those streams. And if it is true that the navigation on those rivers is as free as navigation on tide-water, is it not just and right in us to insist that Congress shall appropriate money to remove the sand-bars, snags and sawyers, and all other obstructions and impediments to commerce there, in like manner as is done to facilitate commercial operations on the sea-coast? If the western States have surrendered their right of tolling commerce on those rivers, for the purpose of raising revenue to improve them, may we not fairly contend that Congress is bound in justice and in duty to those States, to disburse public money in improving the navigation of the *free waters* of the *west*, as is done on the free tide waters of the sea-board, so as to make trade and intercourse equally safe and easy on all the free waters of the nation? By the Constitution, and in law and compact, our western rivers and eastern tide water are on the same free footing, and you will doubtless agree that the general government ought in justice to extend the same facilities to all of them alike.

These, and similar reasons, induced the western members to turn their attention to this subject, and in the year 1820, an appropriation of $5,000 was granted at the instance of Mr. Clay, "to procure surveys, maps, and charts, of the Ohio and Mississippi rivers, from the Rapids of the Ohio, at Louisville, to the Balize, for the purpose of ascertaining the most practicable mode of improving the navigation of those rivers," and $4,500 for similar purposes, on the tributary waters of those rivers. See U. States Laws, April 1820, page 41. Surveys were made accordingly, by skilful engineers, whose report was communicated to Congress, by the President, at the last ses-

sion; and at this session, it was referred to the Committee on Roads and Canals; and that Committee reported the bill, to which I have invited your attention.

The Occupant Laws of Kentucky.

I considered it a special duty to inform you, that the remonstrance of the State of Kentucky, against the decision of the Supreme Court of the United Stases, in the case of Green and Biddle, was presented to the House of Representatives, by Mr. Letcher, of our State, and on his motion, referred to a Committee of the whole House, on the state of the Union. A favourable moment did not occur to call it up, until the 3rd of May, when the House went into Committee on that subject, and Mr. Letcher offered the following propositions:—

Resolved, That provision ought to be made by law, requiring, in any cause decided by the Supreme Court of the United States, in which may be drawn in question the validity of any part of the constitution of a State, or of an act passed by the legislature of a state, that Justices shall concur in pronouncing such part of the said constitution, or act, to be invalid; and that, without the concurrence of that number of said Justices, the part of the constitution, or act of the legislature, (as the case may be) so drawn in question, shall not be deemed or holden invalid.

Resolved, That the Justices aforesaid, in pronouncing their judgment, in any such cause, as aforesaid, ought to be required, by law, to give their opinions, with their respective reasons therefor, separately, and distinctly, if the judgment of the Court be against the validity of the part of the constitution, or act, drawn in question, as aforesaid.

Resolved, That the Committee on the Judiciary be instructed to report a bill, in conformity to the preceding resolutions.

You will see, at a glance, that the question is put, in the resolutions, upon *broad national ground*, and presented in a shape, which ought to create as deep an interest in its success, on the part of the other States, as is felt in it by our own.—Mr. Letcher opened the debate, and went at large into the merits of the decision of the Supreme Court, vacating our occupying claimant laws; as, also, did other members from our State. I thought it my duty to address the Committee, and for your satisfaction, I annex, hereto, the substance of the remarks, which were urged by me, hoping that you will find them in accordance with your interests in the question, and not inconsistent with your general views and wishes. The favourable consideration which the House gave to the resolutions, induces me to believe that a bill will pass at this or the next session of Congress, declaring, that no decision shall be given by the Supreme Court, in any case, where the validity of State laws are drawn in question, unless *five* of the *seven* judges shall concur in the opinion. Such a law would protect us, I believe, against the effects of the late decision of that court; but, as a full explanation on that head of the subject, would require an extension of this address, beyond its

proper limits, I shall waive it for the present, trusting that I may be favoured with occasions to commune with you on that, and some other, topics, which I now find myself compelled to omit entirely. An apology, I fear, is due, for the trespass already committed on your time; and I hope you will find one in the sincere desire which I feel, to make myself as useful to you as possible, by a diffusive reference to subjects, in which we are all concerned, because they relate to the general interests of our common country, as well as those of our particular State. In saying this, I ought to add, in justice to myself, that your continued marks of confidence in me, and the kindness manifested, on your part, in forgetting blunders and errors, into which I, like others, must have fallen—for all are fallible, and none perfect,—lays me under new obligations to exert myself in making my poor services acceptable in your sight. If I have failed in doing so, it is not because I want zeal and good intentions.

I pray you to accept my grateful thanks for the support you have always given me, and to be assured, that the promotion of your prosperity and happiness, shall be the first wish, as it is certainly the first duty, of your representative and fellow-citizen, DAVID TRIMBLE.

The substance of Mr. Trimble's remarks upon the Resolutions offered by Mr. Letcher, to fix the number of the Judges of the Supreme Court, who should concur in decisions given against the validity of State Laws.

Mr. TRIMBLE wanted to say a few words, and would detain the committee only a few minutes. He thought the subject might be placed in a new aspect as important as any that had been given to it. What said he is the question? and how does it come before us? A compact exists between the States of Virginia and Kentucky: a citizen of Kentucky holding a title to land there under the laws of Virginia; or a non-resident, (say a citizen of Virginia) holding in like manner, a title to lands in Kentucky, derived from the laws of Virginia or Kentucky, brings an action at law, or suit in Chancery for the land, and obtains a judgment or decree, in his favour, under which he is put in possession of his right. The *occupant*, who was sued, holds a title of record for the same land, derived under the same code of lands; which title he exhibits to the court, and thereupon demands payment for the value of the lasting improvements made by him on the land; and requires an *assessment* of the *value* of those improvements under the laws of Kentucky, usually called the "*Occupant Laws*;" the adverse party *contests the right* of the occupant, to claim payment for his im-

provements, upon the plea that the Occupant laws are in violation of the compact between the two States. The Supreme Court of the United States, and the inferior Courts, take cognizance of the case under the second section, of the third article of the Federal Constitution; in which article we find the following clauses among others, viz:—"The Judicial power, "(of the United States) *shall extend* to controversies between "two or more States, between a State and citizens of another "State, between citizens of different States, between citizens "of the same State claiming lands under grants of different "States, and between a State, or the citizens thereof, and for-"eign States, citizens, or subjects." And thus the right and *power* of the State of Kentucky to pass the Occupant laws, and the validity of the laws themselves, are drawn in question before the Supreme Court. Mr. Trimble referred to the case of Green and Biddle as an example, the details of which would be found in the remonstrance from the Legislature of Kentucky. It was known, he said, that only *four* of the *seven* Judges sat in that case; *three* of whom were of opinion that the State of Kentucky had no power to pass the Occupant laws just referred to, and the other Judge dissented; so that in point of fact, only *three* Judges concurred in the opinion declaring those laws invalid. In this aspect it is a question of State powers and State rights, and he would like to know, *when* and *how* a *minority* of the Supreme Court became possessed of the power to decide against the validity of a State law? Was it right to suffer a minority of the court to exercise such broad powers?—The friends of State rights insist, that a law of Congress ought to pass declaring that no decision shall be given by the court in such cases, unless a majority of all the Judges shall concur in it. His own opinion, looking to the policy of the question, was, that the law ought to require a concurrence of at least *five* of the *seven* Judges, if not all of them. Would any member show him a solid objection to that number? Look, said he, at the root of the question: each State has plenary power, legislative, executive, and judicial, over all its municipal concerns. The power of each is paramount within its own limits, except in those cases where all have brought themselves under federal subordination. The States grant to Congress and the nation, the supremacy over certain enumerated subjects, and they retain the supremacy over all other subjects. Now, suppose the States to be yet independent of eath other, and foreign to each other as they were before the federation; how would two or more of them decide a dispute between them, or between their citizens? Exactly as all Sovereigns have done and are compelled to do—abandon the dispute, or settle it by making war or by reprisals to enforce the right, or by sending

Ambassadors to make a treaty of settlement, and compromise; or by referring the matter in contest to friendly Sovereigns as arbitrators. But the framers of the constitution foresaw that federal and State rights and powers, might come in conflict with each other; and that controversies might arise between two or more States, or between a State and citizens of other States, or between citizens of different States: And they knew that the system of federation would be incomplete, unless some mode could be devised by which such disputes could be peaceably adjusted; because they must have known that such disputes had dissolved and destroyed all the old confederations of the old continents. Two modes of adjustment were suggested, first,—to leave each State the right of naming friendly arbitrators upon each contested question as it should arise; and second, to constitute a body of perpetual arbitrators. The first mode was in use among the ancients, and the last was once in use, and probably yet is, among the Swiss Cantons. It is the mode adopted in our Constitution: the power is vested in the Supreme Court, and its subordinate Courts, and the Judges are constituted a perpetual body of friendly arbitrators. He called them *friendly arbitrators*, because there was no *magic* in the word *Judge*, all Judges being nothing more nor less than friendly referees. The court takes the place of friendly Sovereigns, and are agreed upon before hand to determine certain high disputes, which, if that provision had been left out of the Constitution, would have been settled by war or by treaties, as among other Sovereign powers. But the Constitution itself is in the nature of a treaty: it is an agreement; a solemn contract; a *compact of union;* a *perpetual treaty of union;* and therefore he thought it strictly proper to say, that the States, and the people of the States, had stipulated and agreed that the Judges of the Supreme Court should be friendly arbitrators, to determine all controversies arising in the class of cases enumerated in the second section of the third article of that instrument; and here the main question comes forward: How many of these arbitrators ought to concur in a decision, where the validity of State laws are disputed? shall all concur? or a bare majority? or some intermediate member? or, can a minority decide? We are here debating the proposition, but no one ventures to defend the propriety or policy of letting a minority exercise the power. Shall it be left to a bare majority? Can we deduce a sound rule from the theory or practice of our government? The Constitution is silent on the subject. It declares that—"The judicial power of the United States should "be vested in one Supreme Court, and in such inferior Courts "as the Congress may, from time to time, ordain and establish." The Federal Courts were established by the law of September,

seventeen hundred and eighty-nine, and that law enacts that the Supreme Court shall consist of one Chief Justice and five Associate Justices; any four of whom are declared to be a quorum to do business; but it omits to say how many shall concur in giving a decision. That omission, however, was supplied by the compulsive operation of the law: If the six Judges sat in a cause, three of them could not decide against a State law: but if four of them were ready to concur, the court could then give judgment; but four is two-thirds of six; and so from the necessity of the case, a State law was not invalidated until two-thirds of all the Judges were against it. If only five Judges sat in a cause, three being a majority of five, could render a decree; and if only four sat, three of them must concur, or else the court would be equally divided: and thus it happened from necessity that no decision could be made against a State law, unless two-thirds of the whole court concurred when all sat; or three-fifths when five sat; or three-fourths when only four sat: And here he intreated gentlemen to remark, that no state of things could possibly occur, in which a *minority* of the whole court could invalidate a law: The conformation of the court put it out of the power of the body to encroach upon State rights by the invalidation of State laws. By the act of February, eighteen hundred and seven, the court is to consist of seven Judges, but no further regulation is made in that law, and of course *four* continued to be a quorum to do business: But as *three* is a majority of *four*, or of *five*, and a minority of seven, it is obvious, that when only *four* or *five* of the Judges sat in a cause, a *minority* of the body could invalidate a State law. The act of eighteen hundred and seven ought to have directed how many of the Judges should concur upon questions touching State rights, but it was then neglected, and Congress is now called upon to supply the omission. Shall we leave the court to regulate itself; or shall it be put "under such regulations as the Congress shall make?" How shall we find a rule? By anology: by looking into the theory and practice of the Federal Government and the State Governments: By consulting the reason of the thing: by following the dictates of sound policy.

By analogy: State power and State rights are put in question, and therefore the case of *two sovereigns*, referring a matter in controversy to other friendly sovereigns, bears a close analogy: It would be called, at the bar of the Court, a case in point; and yet there is not a case to be found in all the books of international law, wherein three or more friendly sovereigns have decided a dispute referred to them, unless *all* of them concurred in the opinion. In such cases, an award by a minority, or a bare majority, would be pronounced as an outrage upon

the parties making the submission. No sovereign would submit, and no nation ought to submit, to an umpire of minorities. Mr. T. again asserted, that by our own constitution, the judges are put in the place of friendly sovereigns, acting as referees between sovereigns, so far, at least, as State rights, and State laws, are drawn in question before them, and that, therefore, they ought to govern themselves by the rules and usages adopted by those who arbitrate between sovereigns. These rules would require a concurrence of all the judges, and he thought it quite probable that the time would come, when those rules would have to be adopted. Take the case of a reference in court, to *three* arbitrators, by consent of parties ; all of them must concur in the award, unless the order of reference specially declares, that any two of the number may decide the matter. From this, and similar cases, he argued, that all the analogies required a concurrence of the whole body of judges or arbitrators. In all the State constitutions, there are clauses declaring what number of members shall form a quorum to do business in the legislative body ; and why ? Because it is generally understood that, without such a clause, none of the members could rightfully act until all were present. A similar clause, he said, would be found in the federal constitution.

But again : in all the states, without exception, if a court is constituted of three or more judges, we shall find a law declaring how many of the judges shall form a quorum to do business : And why ? Because it is believed every where, that without such a regulation, no cause could be heard unless all the judges were on the bench. The *rule* of quorums is sometimes found in the constitution of the State, as in Ohio ; but is generally found in the State laws. And in the case before the committee, the Congress of 1789 must have held the same opinion, or else, why enact, that four judges of the supreme court should be a quorum. In fact, said he, we find the general principle every where and in all the departments of our federal and State governments. And all the exceptions to it appear to have grown up under special provisions. This much at least was clearly true as to all our judicial departments ; first, that the body cannot fractionize its integral powers ; second, that its *power of action* belongs to its *integer*, and not to fractions of it, unless the law has so provided ; and, third, that there is no juridical usage to justify this alarming arogation of power by minorities, more especially as all the *exceptions* are found to rest upon special reasons, which only fortify the general principle. It is true that our system operates upon majorities generally ; and yet we often find a departure from that principle ; not in behalf of minorities, but always in favour of augmented majorities, approximating unanimous concurrence.

For instance, the federal constitution cannot be amended unless three-fourths of the States concur. Now, it is known to every one, that the construction of the judges is the true reading of the constitution, and the person and property of every citizen must stand or fall by it. But these constructions are in the nature of explanatory amendments ; and surely, if less than three-fourths of the States cannot amend the constitution, less than three-fourths of the judges ought not to construe it. The analogy as it struck him was too close to be resisted. Similar provisions were to be found in the State constitutions, and if any of the States have allowed a minority of their own judges to invalidate their own laws, that was their own affair ; and it did not thence follow, that the same State ought to permit a minority of the federal court to send a mandate into its territory, abrogating its municipal laws and State regulations. There was one question which he would barely state, but not discuss, because it was too grave to be lightly considered. Can a minority of the Supreme Court render a judgment or decree abrogating State laws ? Is such a judgment obligatory on the States, or is it not a dead letter in law ? Are a minority of the judges legally competent to render such a judgment or decree ? He had no doubt that this question would be made before long at the bar of the court. In his opinion, the court ought themselves to have settled it, when they, for the first time, gave a decision against the validity of State laws.

As a matter of policy : Was it safe and fitting, that a State law should be vacated by less than five judges out of seven. If it could be shown, that according to juridical usage, a court has the power of declaring that a *majority* of its body shall be a quorum, and that a *majority* of *that quorum* may determine ordinary cases, it would not follow in his opinion, that the Supreme court ought to arrogate such power. That court sits in judgment upon a class of cases, such as were never submitted to the arbitration of any judicial tribunal. It is invested with higher powers than were ever before conferred upon any judicial institution. It may *vacate* a treaty made between the United States and foreign nations ; it may invalidate a compact or treaty made between the general government, and one or more of the States ; it may vacate a compact or treaty between two or more States ; it may invalidate a law of Congress ; it may vacate a State constitution, or annul one or more of its clauses ; it may invalidate a state law, or annul and reverse the judgments and decrees of the highest judicial authorities of the States ; and these are only a part of the extraordinary powers with which it is clothed, over and above the ordinary powers vested in a court of justice. It is in fact a *political body*, invested with high political powers and functions. It is a *per-*

petual arbiter between political bodies—between sovereign powers. Was there no danger in suffering a minority, or a bare majority, of such a body, to decide? such grave and solemn controversies, between such parties. Suppose this Committee was now sitting as a Convention to frame the Constitution, and after vesting the Supreme Court with those high powers, under the name of *Jurisdiction*, let us imagine that some member has offered a proposition to permit a minority, or a bare majority of the Court, to pass judgment on these great questions, involving matter of such deep concernment to the States, would any member of this House vote for the proposition?—He thought himself justified in saying, that no one would venture to give it his sanction. The last thing a free people ought to surrender should be the power of making their own laws; and next to that the power of repealing them. A State makes a dangerous grant of power, when it gives another body the power of annulling and vacating its own laws, against its own consent. Such a power ought to have strong checks upon it. A bare majority is not a sufficient counter-guard. The concurrence of five-sevenths ought to be required, and entire unanimity would perhaps be still better. A Court ought to do justice; and next to that comes the policy of giving general satisfaction, if it can do so, and do right. But the Supreme Court will never be able to give general satisfaction, so long as it allows a minority of its body to abrogate State laws. Such things might be tolerated by good men in peaceful times, but among bad men and in bad times, no one ought to be held responsible for the consequences.

Mr. T. insisted, that all the States had an equal interest in the proposition before the Committee. The case of Green and Biddle had been fully explained by his colleagues, and he would only add, that in his opinion the Judges did not understand the cause, or the points involved in it; and that the decision was not sound law. He did not think that any five of the Judges could be brought to concur in that opinion; and waving the pride of consistency, he did not believe that the same judges would again concur in it—he was sure that among first rate Judges, upon any State Bench, a different decision would have been given. Waving the question of sheer law, and keeping a single eye to the justice of the matter, he had as yet met with no man who condemned the Kentucky acts of Assembly, after fully understanding them, and in his opinion it would be easy to show that under all circumstances, the State had acted with a degree of liberality and forbearance towards non-resident land holders, which ought to command the respect of all enlightened statesmen. He knew that contrary impressions had been made by land speculators and their ad-

vocates, upon persons unacquainted with the situation of the country, and it was a duty which the State owed to itself, as a member of the Union, to vindicate the moral justice of its laws against the unjust aspersions thrown upon them; but as the Committee did not then wish to pursue that branch of the enquiry any further, he would reserve what he had intended to say, until some one should arraign those laws as unjust in principle, if indeed any one could be found possessing temerity enough to do so. He hoped that the amendment offered by the gentleman from Georgia, (Mr. Forsythe) would be rejected, and that the blank in the resolution would be filled with the number five.